

## ARWG REVISIONS TO RECOMMENDATION 5

The FAR Council should review existing rules and regulations, and to the extent necessary, create new uniform government-wide policy and clauses dealing with two potential types of conflicts of interest:

### Organizational Conflicts of Interest

### Personal Conflicts of Interest

The policy should explicitly address the tools the Government may employ to address either type of conflict of interest.

More specifically, the FAR Council should consider:

- a. For potential organizational conflicts of interest development of a standard, or if appropriate a set of standard, OCI clauses for inclusion in solicitations and contracts as well as policy prescribing their use. They should consider conflicts that could arise in areas such as developing requirements and/or statements of work, the selection process and contract administration. Potential conflicts of interest to be addressed should include (but not be limited to) financial, ownership and teaming (on the instant or any other action).
- b. Development, dissemination and training of guidance on how to identify potential OCIs, techniques for addressing them, and remedies available should an OCI occur.
- c. For potential personal conflicts of interest creation of a standard ethics clause, or set of standard clauses if appropriate, for inclusion in solicitations and contracts that set forth the contractor's responsibility to assure that its employees, and those of its subcontractors, parties or any other affiliated organization or individual involved in the instant effort understand that they are required to act with integrity in performance of the contract. In developing such a clause, the FAR Council should consider to what extent specific prohibitions (such as acting where the employee has a personal interest or participating in a claim against the government where they or their firm were involved in the activity that is the basis of that claim) and to what extent reliance on specified principles is more likely to accomplish the end objective of ethical behavior. The criteria for recognizing existing corporate codes of conduct as sufficient should also be considered.
- d. Development, dissemination and training of guidance on how to identify potential personal conflicts of interest, techniques for addressing them and remedies should a personal conflict of interest occur.
- e. Whether existing regulations provide sufficient tools to deter or appropriately hold contractors accountable for violations of either type of conflict of interest, whether they need to create any necessary additional tools and/or whether Congress needs to provide additional authorities to create appropriate tools. They should also consider if additional guidance and/or training is necessary in this area and if so work to provide it.
- g. As there are increasing opportunities for contractors to have access to each other's confidential or proprietary information, and since the consequences of inappropriate disclosure can cause harm both to the firm that owns the information and to the Government, whether existing tools (such as nondisclosure agreements and remedies for inappropriate disclosure) are sufficient or whether additional tools are necessary. If they are determined to be necessary, the FAR Council should develop them, appropriate guidance on when and how to use them, and work with FAI/DAU to develop appropriate training materials and classes to ensure that people are equipped to effectively use them.
- h. In order to reinforce the standards of ethical conduct and to ensure that ethical contractors are not forced to compete with unethical organizations, sanctions against people or organizations who repeatedly violate the rules, or who exhibit an egregious lack of integrity should be strengthened or more fully utilized. These could range from an explicit requirement to evaluate such behavior in past performance

to exclusion from certain competitions, exclusion from doing work for certain agencies, to the extreme case of a lifetime ban individuals and organizations from doing any business with the Federal Government in any capacity whatsoever.

i. FAR Council should setup a special group to create appropriate policy and clauses. Furthermore the group would work with DAU/FAI to develop training in order that the changes can be successfully implemented. The group should solicit input from the public, OGE, commercial organizations, state/local government, and other interested parties that may prove useful.

## **ARWG REVISIONS TO RECOMMENDATION 7**

During the review OFPP should consider the following:

a. Development of a uniform set of ethics principals that contractors would be expected to live up to and for which the contractors would be held accountable. Furthermore, many organizations are not exclusively operating in support of the federal government and there is value in internal clarity and consistency that provides clear direction to contractor employees and their organizations as a whole, therefore where existing standards of conduct, code of ethics, etc. achieve the principals of the federal government's ethics systems those internal rules should be acceptable and the contractor organizations should be held accountable for enforcing them.

b. As the goal is ethical conduct not technical compliance with a multitude of specific and in some cases confusing rules and regulations, the federal government's rules and regulations in its entirety should not be imposed on contractors.

c. With the increasing scope of contractor activity in support of the Federal government and its requirements comes an increasing complexity in the nature of the business and business arrangements used to meet the Federal Governments needs. Contractors almost universally utilize subcontractors, partners, associates, consultants or other parties on a permanent, periodic, or occasional basis to perform their roles. The individuals performing the work for the Government and even interacting with the public may be representatives of any of the aforementioned organizations. Therefore, in order to ensure that the Government and the public receives service performed in an ethical manner, the ethical requirements must flow through the contract to all parties (at whatever level) that we engage in performing work. Furthermore in order to ensure the integrity of the acquisition process, all participants including all bidders (successful or not) must also be held to these principals.

d. Since Contractor Employees will be working with Civil Servants on a daily basis, and because civil service ethics rules are not all self-evident, consideration should be given to a requirement that would make attendance of the Government's annual ethics training (same as given to Civil Servants) mandatory for all service contractors. This will give contractors a better understanding of the rules that the government operates under. Furthermore, consideration should be given to allowing Government employees to attend ethics training of their services contractors in order to understand the contractor's rules and how they support the principals of the Federal Government's ethics program.